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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

| | |
|------------------------|---|
| Proceeding | 91199752 |
| Party | Plaintiff Evonik Degussa GmbH |
| Correspondence Address | ELIZABETH G. BORLAND and SCOTT D. WOLDOW SMITH GAMBRELL & RUSSELL, LLP Suite 3100-Promenade, 1230 Peachtree Street, N.E. Atlanta, GA 30309 UNITED STATES eborland@sgrlaw.com, sdwoldow@sgrlaw.com, mbedsole@sgrlaw.com |
| Submission | Other Motions/Papers |
| Filer's Name | Elizabeth G. Borland |
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| Signature | /Elizabeth G. Borland/ |
| Date | 04/23/2013 |
| Attachments | Evonik Afgritech Opp 2ND Not of Rel - Redacted Public Version.pdf (35 pages) (655912 bytes) |

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE
THE TRADEMARK TRIAL AND APPEAL BOARD

EVONIK DEGUSSAGmbH,

Opposer,

v.

AFGRITECH, LTD.,

Applicant.

Opposition No. 91199752

Mark: AMINOGREEN

Serial No. 85/096,047

Filed: July 29, 2010

Published: January 11, 2011

OPPOSER'S SECOND NOTICE OF RELIANCE
(REDACTED PUBLIC VERSION)

Opposer Evonik Degussa GmbH, pursuant to Trademark Rules 2.120(j) and 2.122(e) of the Trademark Rules of Practice, 37 C.F.R. §§ 2.120 and 2.122, hereby introduces into evidence and makes of record the following materials in support of its opposition to registration of the AMINOGREEN mark:

Discovery Requests and Responses

Opposer introduces the following discovery requests and responses, copies of which are attached as numbered Exhibits as indicated:

| EXHIBIT | DOCUMENT NAME | DATE SERVED | REQUESTS AND RESPONSES OFFERED INTO EVIDENCE |
|---------|--|-------------------|--|
| 11 | Evonik Degussa GmbH's First Set of Interrogatories | November 16, 2011 | 12, 14-16, 22, 24, 26, 37 |
| 12 | Applicant's Objections and Responses to Opposer's First Set of Interrogatories | December 21, 2011 | 12, 14-16, 22, 24, 26, 37 |

This 23rd day of April, 2013.

Respectfully submitted,

/s Elizabeth G. Borland

Elizabeth G. Borland

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Counsel for Opposer Evonik Degussa GmbH

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing OPPOSER'S SECOND NOTICE OF RELIANCE (Redacted Public Version) was on this day served upon all parties pursuant to 37 C.F.R. § 2.119(b)(4) by first-class mail, addressed as follows:

Thomas H. Van Hoozer
Cheryl Burbach
Hovey Williams LLP
10801 Mastin Blvd., Suite 1000
Overland Park, KS 66210

Pursuant to 37 C.F.R. § 2.119(b)(6) and to the July 21, 2011 letter between counsel the parties, a courtesy copy was also sent by email.

This 23rd day of April, 2013.

s/ Elizabeth G. Borland
Elizabeth G. Borland

EXHIBIT 11

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial Nos. 85/096,047 and 79/083,600

| | | |
|---------------------|---|----------------------------------|
| Evonik Degussa GmbH |) | |
| |) | |
| |) | |
| v. |) | Opposition No. 91199752 (parent) |
| |) | Opposition No. 91200334 |
| |) | |
| Afgritech Ltd. |) | |
| |) | |
| |) | |
| |) | |

EVONIK DEGUSSA GMBH'S FIRST SET OF INTERROGATORIES

Pursuant to the Trademark Trial and Appeal Board Manual of Procedure § 405, 37 C.F.R. §§ 2.116 and 2.120(d)(1), and FED. R. CIV. P. 26 and 33, Evonik Degussa GmbH ("Evonik") hereby propounds the following Interrogatories to be answered separately under oath by Afgritech Ltd. ("Afgritech"):

DEFINITIONS

1. "Afgritech," "you," and "your" means Afgritech Ltd., any predecessors, subsidiaries, parents, affiliates, or other related entities acting in concert with or under the control of Afgritech Ltd., and all persons acting on behalf of Afgritech Ltd., including, but not limited to, all past or present directors, officers, agents, servants, representatives, members, and employees.
2. "Evonik" means Evonik Degussa GmbH, any predecessors, subsidiaries, parents, affiliates, or other related entities acting in concert with or under the control of Evonik Degussa GmbH, and all persons acting on behalf of Evonik Degussa GmbH, including, but not limited to, all past or present directors, officers, agents, servants, representatives, and employees.
3. The "PTO" means the United States Patent and Trademark Office.

4. The “AMINOGREEN Mark” means that mark that is the subject of Afgritech’s Application Serial Number 85/096,047 with the PTO.

5. The “AMINORED Mark” means that mark that is the subject of Evonik’s Application Serial Number 79/083,600 with the PTO.

6. The “AMINOMAX Mark” means that mark that is the subject of Afgritech’s Registration Number 3,905,808 with the PTO.

7. “Document” means, without limitation, every writing, record, or data compilation of every type and description stored in any medium from which information can be obtained, including those existing in all manner of memory means or devices used in connection with electronic computers or word processors, that is or has been in your possession, custody, or control, or of which you have knowledge, including, without limitation: writings, drawings, artwork, papers, contracts, calendars, journals, meeting minutes, correspondence, memoranda, tapes, communications, invoices, purchase orders, receipts, accounts, stenographic or handwritten notes, studies, publications, books, pamphlets, brochures, catalogs, labels, packaging, displays, illustrative materials, circulars, price lists, layouts, tear sheets, pictures, photographs, films, videotapes, slides, sound or voice recordings, maps, reports, surveys, minutes, graphs, statistical compilations, charts, calculations, projections, plans, data processing cards, images, electronically-stored information (“ESI”), electronic mail, tapes, floppy disks, hard drives, compact discs, DVDs, removable drives, CDs, optical storage, computer records, computer printouts, every copy of such writing or record of the original that is not in your possession, custody, or control, and every copy of every such writing or record where such copy is not an identical copy of an original or where such copy contains any commentary or notation whatsoever that does not appear on the original.

8. As used herein, “and” and “or” are to be construed disjunctively or conjunctively as necessary in order to bring within the scope of the Interrogatory all responses which may otherwise be considered to be outside its scope.

9. As used herein, “relate to,” “related to,” and “relating to” mean comprising, directly or indirectly mentioning, describing, pertaining or referring to, being connected with, reflecting upon, or resulting from the stated subject matter.

10. As used herein, the singular form or masculine gender includes, respectively, the plural and feminine or neuter gender, and vice versa.

11. As used herein, “including” is not be used to limit any general category or description that precedes it; where it appears, it is intended to be comprehensive and means “including but not limited to.”

12. As used herein, “all,” “every,” “any,” “each,” and “one or more” include each other whenever possible to expand, and not restrict, the scope of the Interrogatory.

13. “Identify” when used in reference to:

A. An individual or person means to state his or her full name, present or last known address and telephone number, present or last known business or employer name, address and telephone number, and job title, together with a statement as to his or her present or former relationship with Afgritech, if any, and the inclusive dates thereof;

B. A firm, entity, partnership, corporation, proprietorship, association, or other organization or entity means to state its full name and present or last known address and telephone number, the legal form of such entity or organization, and the identity of its chief executive officer;

C. A document means to state the type of document, the general subject matter of the document, and the date of the document; and to identify its author(s), addressee(s), and other recipient(s);

D. A communication means to state the substance of the communication in meaningful detail, the date and place of such communication, the means used to effect the communication (*e.g.*, telephone, telegram, conversation, conference, *etc.*); and to identify all persons who participated in, heard, or witnessed the communication and each document relating to the communication.

INTERROGATORIES

1. Identify (by name and title) each of Afgritech's supervisory employees responsible for the promotion, sale, or distribution of Afgritech's goods and services under the AMINOGREEN Mark.

2. Identify (by name and title) each of Afgritech's supervisory employees responsible for the promotion, sale, or distribution of Afgritech's goods and services under the AMINOMAX Mark.

3. State the date that Afgritech selected the AMINOGREEN Mark to identify Afgritech's goods and services.

4. State the date that Afgritech selected the AMINOMAX Mark to identify Afgritech's goods and services.

5. Identify (by name, job title, and relationship to Afgritech) the person(s) who first selected, adopted, created, or conceived of the AMINOGREEN Mark.

6. Identify (by name, job title, and relationship to Afgritech) the person(s) who first selected, adopted, created, or conceived of the AMINOMAX Mark.

7. Identify and describe every search, inquiry, or investigation relating to the AMINOGREEN Mark ever made by any person at Afgritech or on behalf of Afgritech, and identify all persons with knowledge of any such search, inquiry, or investigation.

8. Identify and describe every search, inquiry, or investigation relating to the AMINOMAX Mark ever made by any person at Afgritech or on behalf of Afgritech, and identify all persons with knowledge of any such search, inquiry, or investigation.

9. State whether you have ever received any opinion relating to whether there is a likelihood of confusion between the AMINOGREEN Mark and any other mark, and, if so, with respect to each such opinion, identify the person rendering such opinion and each document in which such opinion is expressed, and state a summary of each such opinion.

10. State whether you have ever received any opinion relating to whether there is a likelihood of confusion between the AMINOMAX Mark and any other mark, and, if so, with respect to each such opinion, identify the person rendering such opinion and each document in which such opinion is expressed, and state a summary of each such opinion.

11. Describe the circumstances whereby Afgritech first learned of the AMINORED Mark, including but not limited to the date thereof.

12. Identify each good or service – including any goods and/or services not identified in Afgritech's Application Serial Number 85/096,047 – that Afgritech has offered for sale or intends to offer for sale under the AMINOGREEN Mark.

13. For each good or service identified in your Response to Interrogatory No. 12, identify each state where the good or service is offered for sale or intended to be offered for sale under the AMINOGREEN Mark.

14. For each good or service identified in your Response to Interrogatory No. 12, identify the date on which the good or service was first offered for sale under the AMINOGREEN Mark.

15. For each good or service identified in your Response to Interrogatory No. 12, state, by calendar quarter, the dollar volume budgeted and expended by Afgritech to promote the AMINOGREEN Mark in connection therewith.

16. For each good or service identified in your Response to Interrogatory No. 12, state, by calendar quarter, the approximate income anticipated or received to date from Afgritech's sales of those goods or services under the AMINOGREEN Mark.

17. Identify each good or service – including any goods and/or services not identified in Afgritech's Registration Number 3,905,808 – that Afgritech has offered for sale or intends to offer for sale under the AMINOMAX Mark.

18. For each good or service identified in your Response to Interrogatory No. 17, identify each state where the good or service is offered for sale or intended to be offered for sale under the AMINOMAX Mark.

19. For each good or service identified in your Response to Interrogatory No. 17, identify the date on which the good or service was first offered for sale under the AMINOMAX Mark.

20. For each good or service identified in your Response to Interrogatory No. 17, state, by calendar quarter, the dollar volume budgeted and expended by Afgritech to promote the AMINOMAX Mark in connection therewith.

21. For each good or service identified in your Response to Interrogatory No. 17, state, by calendar quarter, the approximate income anticipated or received to date from Afgritech's sales of those goods or services under the AMINOMAX Mark.

22. Identify representative examples of each different promotional document or item used or being considered for use by Afgritech in connection with the promotion and sale of Afgritech's goods and services under the AMINOGREEN Mark.

23. Identify representative examples of each different promotional document or item used or being considered for use by Afgritech in connection with the promotion and sale of Afgritech's goods and services under the AMINOMAX Mark.

24. Identify (by title, publisher, issue date, page number, media outlet, Internet URL, and any other relevant designation), those printed and electronic publications (including websites and broadcast media commercials) in which Afgritech has promoted or plans to promote its goods or services under the AMINOGREEN Mark.

25. Identify (by title, publisher, issue date, page number, media outlet, Internet URL, and any other relevant designation), those printed and electronic publications (including websites and broadcast media commercials) in which Afgritech has promoted or plans to promote its goods or services under the AMINOMAX Mark.

26. Identify (by name, date and location) all marketing venues (such as trade shows or fairs) where Afgritech has promoted or plans to promote its goods or services under the AMINOGREEN Mark.

27. Identify (by name, date and location) all marketing venues (such as trade shows or fairs) where Afgritech has promoted or plans to promote its goods or services under the AMINOMAX Mark.

28. Identify those persons with knowledge of any market research (including surveys, studies, investigations, and focus-group inquiries) conducted by or on behalf of Afgritech relating to the AMINOGREEN Mark, and for each such person, identify the extent of such knowledge.

29. Identify those persons with knowledge of any market research (including surveys, studies, investigations, and focus-group inquiries) conducted by or on behalf of Afgritech relating to the AMINOMAX Mark, and for each such person, identify the extent of such knowledge.

30. Describe every communication with any person (including, but not limited to, actual or potential customers) relating to any possible mistake or confusion between the AMINOGREEN Mark and the AMINORED Mark at any time, and, with respect to each, state the date of the communication, identify the person(s) involved, and identify all persons with knowledge of the facts relating to each such instance of mistake or confusion.

31. Describe every communication with any person (including, but not limited to, actual or potential customers) relating to any possible mistake or confusion between the AMINOMAX Mark and the AMINORED Mark at any time, and, with respect to each, state the date of the communication, identify the person(s) involved, and identify all persons with knowledge of the facts relating to each such instance of mistake or confusion.

32. Describe the circumstances of your receipt of any document, correspondence, payment, or telephone call relating to the AMINORED Mark, including but not limited to identifying when it was received, the entity from which it was received, and the specific person who received it.

33. Identify the channels of distribution and the geographical areas of trade within which Afgritech's goods and services are promoted and/or sold or are intended to be promoted and/or sold under the AMINOGREEN Mark.

34. Identify the channels of distribution and the geographical areas of trade within which Afgritech's goods and services are promoted and/or sold or are intended to be promoted and/or sold under the AMINOMAX Mark.

35. Identify the types of customers with whom Afgritech does business or intends to do business under the AMINOGREEN Mark, and the types of ultimate consumers to whom Afgritech offers or intends to offer for sale Afgritech's goods or services under the AMINOGREEN Mark.

36. Identify the types of customers with whom Afgritech does business or intends to do business under the AMINOMAX Mark, and the types of ultimate consumers to whom Afgritech offers or intends to offer for sale Afgritech's goods or services under the AMINOMAX Mark.

37. Identify each person or agency that has participated in the creation or distribution of advertisements or promotions for Afgritech's goods or services under the AMINOGREEN Mark, and the period of time during which each such person or agency has participated.

38. Identify each person or agency that has participated in the creation or distribution of advertisements or promotions for Afgritech's goods or services under the AMINOMAX Mark, and the period of time during which each such person or agency has participated.

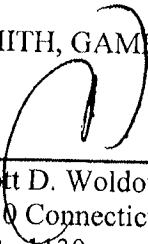
39. Identify (by parties, jurisdiction, and case number) every other case or administrative proceeding, including proceedings before the PTO, relating to a trademark or service mark to which you have been a party, and for each such proceeding, identify the

trademark or service mark involved in the proceeding, and describe the disposition or present status of the proceeding.

40. Identify each person who has supplied documents or information for, or who has participated in responding to, these Interrogatories, or Evonik's First Requests for Production of Documents, served concurrently herewith, including each person's name, title, and business address.

Respectfully submitted this 16th day of November, 2011.

SMITH, GAMBRELL & RUSSELL, LLP



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Attorneys for Evonik Degussa GmbH

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial Nos. 85/096,047 and 79/083,600

| | | |
|---------------------|---|----------------------------------|
| Evonik Degussa GmbH |) | |
| |) | |
| |) | |
| v. |) | Opposition No. 91199752 (parent) |
| |) | Opposition No. 91200334 |
| |) | |
| Afgritech Ltd. |) | |
| |) | |
| _____ |) | |

CERTIFICATE OF SERVICE

I, Scott D. Woldow, counsel for Evonik Degussa GmbH, do hereby certify that Evonik Degussa GmbH's First Set of Interrogatories was on this day served upon Afgritech Ltd. pursuant to 37 C.F.R. § 2.119(b)(4) by first-class mail, addressed as follows:

Thomas H. Van Hoozer
Hovey Williams LLP
10801 Mastin Blvd. Suite 1000
Overland Park, KS 66210

Pursuant to 37 C.F.R. § 2.119(b)(6) and to the July 21, 2011 letter between counsel for Evonik and Afgritech, a courtesy copy was also sent by email.

This 16th day of November, 2011.



Scott D. Woldow

EXHIBIT 12

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

| | | |
|----------------------|---|----------------------------------|
| Evonik Degussa GmbH, |) | |
| |) | |
| Opposer, |) | |
| |) | |
| v. |) | Opposition No. 91199752 (parent) |
| |) | 91200034 |
| |) | |
| |) | |
| Afgritech Ltd., |) | |
| |) | |
| Applicant. |) | |

**AFGRITECH'S OBJECTIONS AND RESPONSES TO OPPOSER'S
FIRST SET OF INTERROGATORIES TO APPLICANT**

Applicant Afgritech, Ltd. ("Afgritech"), pursuant to Federal Rule of Civil Procedure 34, as incorporated into the Rules of Practice in Trademark Cases under the provisions of 37 C.F.R. 2.116 and Rule 2.120 of the Trademark Rules of Practice, objects and responds to Opposer Evonik Degussa GmbH ("Opposer") First Set of Interrogatories addressed to Afgritech. Afgritech reserves the right to supplement these responses upon the discovery of additional documents through discovery or otherwise. Some of Afgritech's answers to the discovery requests contain **Confidential Business Information/Trade Secrets** and those answers are being submitted on separate pages.

GENERAL OBJECTIONS

1. Afgritech objects to each interrogatory to the extent it contains multiple discrete subparts. Afgritech further objects to the entirety of Opposer's First Set of Interrogatories on the basis that the number of interrogatories, including subparts, exceed 75 in number. *See* 37 C.F.R. 2.120(d)(1); TBMP § 405.03(e).
2. Afgritech generally objects to each and every request to the extent it calls for the disclosure of attorney-client privileged communications and/or attorney work product. Afgritech will not undertake to locate and log communications between Afgritech and counsel regarding the subject matter of this opposition dated after the institution of the opposition pursuant to the prior agreement with Opposer's counsel.
3. Afgritech objects to each discovery request and it has not responded to the extent that the requests seek "each," "any," "all," "related," or "relating" information as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence, if by these terms, Opposer purports to require Afgritech to investigate for and produce all

information and materials touching on the subject of the interrogatory. Afgritech is interpreting such requests as calling for the identification or production of information or materials, to the extent not objected to, which most fully or directly address the subject of the requests, or is representative of the subject information or materials of Afgritech. If, by these terms in the interrogatories, Opposer expects Afgritech to also divulge information or material which is repetitive, cumulative, or only incidentally related to the interrogatory subject, then Afgritech objects to this purported scope on the basis that such requests are vague, overbroad, unduly burdensome, oppressive, and not reasonably calculated to lead to the discovery of admissible evidence.

4. Afgritech objects to the extent that there are no time limitations set forth in Opposer's interrogatories rendering some of them overbroad, unduly burdensome, not relevant, and not reasonably calculated to lead to the discovery of admissible evidence. Afgritech will not undertake to log communications between Afgritech and counsel for Afgritech dated after the institution of this opposition regarding this opposition nor the actions of counsel or actions taken at counsel's direction in furtherance of this opposition.
5. Afgritech objects to divulging information which contains commercially sensitive information, business trade secrets, or other confidential information to the extent not already provided for by the Protective Order entered by the Board pursuant to 37 C.F.R. § 2.116(g) or any other protective order entered by the parties. Any information subject to production that contains commercially sensitive information, business trade secrets, or other confidential information shall be produced subject to the Protective Order entered by the Board pursuant to 37 C.F.R. § 2.116(g) or any other protective order entered by the parties.
6. Afgritech objects to each interrogatory to the extent that it calls for information not reasonably available to, or not within the possession, custody, or control of Afgritech. The responses below are based on information reasonably available to Afgritech and information within Afgritech's possession, custody, or control.
7. Each of the foregoing objections shall be considered continuing and are hereby incorporated by reference into each specific response.

INTERROGATORIES

INTERROGATORY NO. 1:

Identify (by name and title) each of Afgritech's supervisory employees responsible for the promotion, sale, or distribution of Afgritech's goods and services under the AMINOGREEN Mark.

ANSWER: Afgritech objects on the basis that the interrogatory is not limited in time or geographic scope. Subject to that and the General Objections, Afgritech states that it has not begun using the AMINOGREEN Mark in the United States and, therefore, there are not

supervisory employees responsible for the promotion, sale, or distribution of Afgritech's goods and services under the AMINOGREEN Mark.

INTERROGATORY NO. 2:

Identify (by name and title) each of Afgritech's supervisory employees responsible for the promotion, sale, or distribution of Afgritech's goods and services under the AMINOMAX Mark.

ANSWER: Afgritech objects on the basis that the interrogatory is not limited in time or geographic scope. Subject to that and the General Objections, Afgritech states that Afgritech's current supervisory employees responsible for the promotion, sale, or distribution of Afgritech's goods and services under the AMINOMAX Mark in the United States are Richard Wark, President of Afgritech, LLC, and Les Bergham, Regional Sales Manager of Afgritech, LLC, each of whom may be reached through Afgritech's counsel.

INTERROGATORY NO. 3:

State the date that Afgritech selected the AMINOGREEN Mark to identify Afgritech's goods and services.

ANSWER: Afgritech objects on the basis that the interrogatory is unduly burdensome, overly broad, and not reasonably calculated to lead to the discovery of admissible evidence to the extent the Interrogatory seeks information that is not specific to the United States. Subject to that and the General Objections, Afgritech states that it does not know the exact date that Afgritech selected the AMINOGREEN Mark to identify Afgritech's goods in the United States, but, in any event, no later than sometime before June 27, 2006.

INTERROGATORY NO. 4:

State the date that Afgritech selected the AMINOMAX Mark to identify Afgritech's goods and services.

ANSWER: Afgritech objects on the basis that the interrogatory is unduly burdensome, overly broad, and not reasonably calculated to lead to the discovery of admissible evidence to the extent the Interrogatory seeks information that is not specific to the United States. Subject to that and the General Objections, Afgritech states that it does not know the exact date that Afgritech selected the AMINOMAX Mark to identify Afgritech's goods in the United States, but, in any event, on or about March 2006.

INTERROGATORY NO. 5:

Identify (by name, job title, and relationship to Afgritech) the person(s) who first selected, adopted, created, or conceived of the AMINOGREEN Mark.

ANSWER: Subject to the General Objections, Afgritech states that Chris Holmes, Chief Executive Officer of Afgritech Ltd., first selected, adopted, created or conceived of the AMINOGREEN Mark.

INTERROGATORY NO. 6:

Identify (by name, job title, and relationship to Afgritech) the person(s) who first selected, adopted, created, or conceived of the AMINOMAX Mark.

ANSWER: Subject to the General Objections, Afgritech states that the following persons first selected, adopted, created or conceived of the AMINOMAX Mark:

- Chris Holmes, Chief Executive Officer of Afgritech Ltd.
- Duncan Rose, Technical Manager for Carrs Billington Agriculture (Sales) Ltd.
- Dr. Conrad Coetzer, Technical Consultant for Afgri Operations Ltd or on behalf of one of its trading divisions or affiliates
- Dr. Hinner Koster, with Afgri Operations Ltd. or one of its trading divisions

INTERROGATORY NO. 7:

Identify and describe every search, inquiry, or investigation relating to the AMINOGREEN Mark ever made by any person at Afgritech or on behalf of Afgritech, and identify all persons with knowledge of any such search, inquiry, or investigation.

ANSWER: Afgritech objects to this interrogatory to the extent it calls for information that is protected by the attorney-client privilege and/or work product doctrine. Afgritech objects on the basis that the interrogatory is unduly burdensome, overly broad, and not reasonably calculated to lead to the discovery of admissible evidence to the extent the Interrogatory seeks information that is not specific to the United States. Subject to those objections and the General Objections, Afgritech states none regarding the United States.

INTERROGATORY NO. 8:

Identify and describe every search, inquiry, or investigation relating to the AMINOMAX Mark ever made by any person at Afgritech or on behalf of Afgritech, and identify all persons with knowledge of any such search, inquiry, or investigation.

ANSWER: Afgritech objects on the basis that the interrogatory is unduly burdensome, overly broad, and not reasonably calculated to lead to the discovery of admissible evidence to the extent the Interrogatory seeks information that is not specific to the United States. Afgritech objects to this interrogatory to the extent it calls for information that is protected by the attorney-client privilege and/or work product doctrine. Subject to those objections and the General Objections, Afgritech states none regarding the United States.

INTERROGATORY NO. 9:

State whether you have ever received any opinion relating to whether there is a likelihood of confusion between the AMINOGREEN Mark and any other mark, and, if so, with respect to each such opinion, identify the person rendering such opinion and each document in which such opinion is expressed, and state a summary of each such opinion.

ANSWER: Afgritech objects to the extent this Interrogatory seeks information that is protected by the attorney-client privilege and/or the work product doctrine, including, but not limited to, the summary of any legal opinion. Afgritech objects on the basis that the interrogatory is unduly burdensome, overly broad, and not reasonably calculated to lead to the discovery of admissible evidence to the extent the Interrogatory seeks information that is not specific to the United States. Subject to those objections and the General Objections, Afgritech states that Thomas H. Van Hoozer (counsel of record in this proceeding) rendered an opinion in written correspondence dated May 12, 2011 and subsequent to the filing of the parent opposition.

INTERROGATORY NO. 10:

State whether you have ever received any opinion relating to whether there is a likelihood of confusion between the AMINOMAX Mark and any other mark, and, if so, with respect to each such opinion, identify the person rendering such opinion and each document in which such opinion is expressed, and state a summary of each such opinion.

ANSWER: Afgritech objects on the basis that the interrogatory is unduly burdensome, overly broad, and not reasonably calculated to lead to the discovery of admissible evidence to the extent the Interrogatory seeks information that is not specific to the United States. Afgritech objects to the extent this Interrogatory seeks information that is protected by the attorney-client privilege and/or the work product doctrine, including, but not limited to, the summary of any legal opinion. Subject to those objections and the General Objections, Afgritech states that Thomas H. Van Hoozer (counsel of record in this proceeding) rendered an opinion in written correspondence dated May 12, 2011 and subsequent to the filing of the parent opposition.

INTERROGATORY NO. 11:

Describe the circumstances whereby Afgritech first learned of the AMINORED Mark, including but not limited to the date thereof.

ANSWER: Afgritech objects on the basis that the interrogatory is unduly burdensome, overly broad, and not reasonably calculated to lead to the discovery of admissible evidence to the extent the Interrogatory seeks information that is not specific to the United States. Subject to that and the General Objections, Afgritech states that it learned of the AMINORED Mark upon receipt of the Notice of Opposition in this proceeding.

INTERROGATORY NO. 12:

Identify each good or service - including any goods and/or services not identified in Afgritech's Application Serial Number 85/096,047 - that Afgritech has offered for sale or intends to offer for sale under the AMINOGREEN Mark.

ANSWER: Afgritech objects on the basis that the request seeks information not reasonably calculated to lead to the discovery of admissible evidence and is outside the scope of the opposition. Afgritech objects on the basis that the interrogatory is unduly burdensome, overly broad, and not reasonably calculated to lead to the discovery of admissible evidence to the extent the Interrogatory seeks information that is not specific to the United States. Subject to those objections and the General Objections, Afgritech states that it intends to sell animal feed supplements and/or livestock feed under the AMINOGREEN Mark in the United States.

INTERROGATORY NO. 13:

For each good or service identified in your Response to Interrogatory No. 12, identify each state where the good or service is offered for sale or intended to be offered for sale under the AMINOGREEN Mark.

ANSWER: Afgritech objects on the basis that the interrogatory is unduly burdensome, overly broad, not relevant or material, and not reasonably calculated to lead to the discovery of admissible evidence to the extent the Interrogatory seeks information that is not specific to the states of the United States. Subject to that and the General Objections, Afgritech states that it intends to make the goods under the AMINOGREEN Mark available for purchase throughout the United States.

INTERROGATORY NO. 14:

For each good or service identified in your Response to Interrogatory No. 12, identify the date on which the good or service was first offered for sale under the AMINOGREEN Mark.

ANSWER: Afgritech objects on the basis that the interrogatory is unduly burdensome, overly broad, and not reasonably calculated to lead to the discovery of admissible evidence to the extent the Interrogatory seeks information that is not specific to the United States. Subject to that and the General Objections, Afgritech states none in the United States.

INTERROGATORY NO. 15:

For each good or service identified in your Response to Interrogatory No. 12, state, by calendar quarter, the dollar volume budgeted and expended by Afgritech to promote the AMINOGREEN Mark in connection therewith.

INTERROGATORY NO. 16:

For each good or service identified in your Response to Interrogatory No. 12, state, by calendar quarter, the approximate income anticipated or received to date from Afgritech's sales of those goods or services under the AMINOGREEN Mark.

ANSWER: Afgritech objects on the basis that the interrogatory is unduly burdensome, overly broad, and not reasonably calculated to lead to the discovery of admissible evidence to the extent the Interrogatory seeks information that is not specific to the states of the United States.

CONFIDENTIAL BUSINESS INFORMATION/TRADE SECRET -

REDACTED

INTERROGATORY NO. 17:

Identify each good or service - including any goods and/or services not identified in Afgritech's Registration Number 3,905,808 - that Afgritech has offered for sale or intends to offer for sale under the AMINOMAX Mark.

ANSWER: Afgritech objects on the basis that the request seeks information not reasonably calculated to lead to the discovery of admissible evidence and is outside the scope of the opposition. Afgritech objects on the basis that the interrogatory is unduly burdensome, overly broad, and not reasonably calculated to lead to the discovery of admissible evidence to the extent the Interrogatory seeks information that is not specific to the United States. Subject to that and the General Objections, Afgritech states that it sells a product useful both as animal feed supplements and livestock feed under the AMINOMAX Mark as AMINOMAX S, AMINOMAX Pro, and AMINOMAX C in the United States.

INTERROGATORY NO. 18:

For each good or service identified in your Response to Interrogatory No. 17, identify each state where the good or service is offered for sale or intended to be offered for sale under the AMINOMAX Mark.

ANSWER: Afgritech objects on the basis that the interrogatory is unduly burdensome, overly broad, not material or relevant, and not reasonably calculated to lead to the discovery of admissible evidence to the extent the Interrogatory seeks information that is not specific to the United States. Subject to that and the General Objections, Afgritech states that it has sold its AMINOMAX products in New York, New Hampshire, Connecticut, Massachusetts, Maine, Vermont, and Pennsylvania, but the AMINOMAX product is available for purchase in all of the 50 States.

INTERROGATORY NO. 19:

For each good or service identified in your Response to Interrogatory No. 17, identify the date on which the good or service was first offered for sale under the AMINOMAX Mark.

ANSWER: Afgritech objects on the basis that the interrogatory is unduly burdensome, overly broad, and not reasonably calculated to lead to the discovery of admissible evidence to the extent the Interrogatory seeks information that is not specific to the United States. Subject to that and the General Objections, Afgritech states that its product was first shipped bearing the AMINOMAX Mark in the United States at least as early as November 11, 2010.

INTERROGATORY NO. 20:

For each good or service identified in your Response to Interrogatory No. 17, state, by calendar quarter, the dollar volume budgeted and expended by AfgriTech to promote the AMINOMAX Mark in connection therewith.

ANSWER: AfgriTech objects on the basis that the interrogatory is unduly burdensome, overly broad, not relevant or material, and not reasonably calculated to lead to the discovery of admissible evidence to the extent the Interrogatory seeks information that is not specific to the United States. AfgriTech also objects on the basis that the request is unduly burdensome to the extent that it is required to provide information on a quarterly basis.

CONFIDENTIAL BUSINESS INFORMATION/TRADE SECRET –

REDACTED

INTERROGATORY NO. 21:

For each good or service identified in your Response to Interrogatory No. 17, state, by calendar quarter, the approximate income anticipated or received to date from Afgritech's sales of those goods or services under the AMINOMAX Mark.

ANSWER: Afgritech objects on the basis that the interrogatory is unduly burdensome, overly broad, and not reasonably calculated to lead to the discovery of admissible evidence to the extent the Interrogatory seeks information that is not specific to the United States. Afgritech objects on the basis that the interrogatory is vague and ambiguous to the extent that it seeks information about the "income" of Afgritech, which is not defined.

CONFIDENTIAL BUSINESS INFORMATION/TRADE SECRET –

REDACTED

INTERROGATORY NO. 22:

Identify representative examples of each different promotional document or item used or being considered for use by Afgritech in connection with the promotion and sale of Afgritech's goods and services under the AMINOGREEN Mark.

ANSWER: Afgritech objects on the basis that the interrogatory is unduly burdensome, overly broad, and not reasonably calculated to lead to the discovery of admissible evidence to the extent the Interrogatory seeks information that is not specific to the United States. Subject to that and the General Objections, Afgritech states there are none.

INTERROGATORY NO. 23:

Identify representative examples of each different promotional document or item used or being considered for use by Afgritech in connection with the promotion and sale of Afgritech's goods and services under the AMINOMAX Mark.

ANSWER: Afgritech objects on the basis that the interrogatory is unduly burdensome, overly broad, and not reasonably calculated to lead to the discovery of admissible evidence to the extent the Interrogatory seeks information that is not specific to the United States. Subject to that and the General Objections, Afgritech has produced responsive documents pursuant to Fed. R. Civ. P. 33(d) from which the information requested can be derived.

INTERROGATORY NO. 24:

Identify (by title, publisher, issue date, page number, media outlet, Internet URL, and any other relevant designation), those printed and electronic publications (including websites and broadcast media commercials) in which Afgritech has promoted or plans to promote its goods or services under the AMINOGREEN Mark.

ANSWER: Afgritech objects on the basis that the interrogatory is unduly burdensome, overly broad, and not reasonably calculated to lead to the discovery of admissible evidence to the extent the Interrogatory seeks information that is not specific to the United States. Subject to that and the General Objections, Afgritech states that has plans to promote its goods under the AMINOGREEN Mark at its website found at www.aminomax.com. Various printed and electronic publications in the field of livestock management and animal husbandry, including, but not limited to, *Country Folks*, *Dairy Herd Management*, *Feedstuffs*, *Hoards Dairymen*, *Progressive Dairymen*, Afgritech further states that it has not yet promoted its goods under the AMINOGREEN Mark.

INTERROGATORY NO. 25:

Identify (by title, publisher, issue date, page number, media outlet, Internet URL, and any other relevant designation), those printed and electronic publications (including websites and

broadcast media commercials) in which Afgritech has promoted or plans to promote its goods or services under the AMINOMAX Mark.

ANSWER: Afgritech objects on the basis that the interrogatory is unduly burdensome, overly broad, not relevant or material, and not reasonably calculated to lead to the discovery of admissible evidence to the extent the Interrogatory seeks information that is not specific to the United States. Additionally, Afgritech objects on the basis that this interrogatory is unduly burdensome and overly broad to the extent it seeks information about every instance in which Afgritech has promoted its AMINOMAX Mark since it was first adopted. Subject to that and the General Objections, Afgritech states that it has promoted its goods under the AMINOMAX Mark every day since its adoption of the mark at its website found at www.aminomax.com. Additionally, Afgritech has produced responsive documents pursuant to Fed. R. Civ. P. 33(d) from which the information requested can be derived.

INTERROGATORY NO. 26:

Identify (by name, date and location) all marketing venues (such as trade shows or fairs) where AfgriTech has promoted or plans to promote its goods or services under the AMINOGREEN Mark.

ANSWER: AfgriTech objects on the basis that the interrogatory is unduly burdensome, overly broad, and not reasonably calculated to lead to the discovery of admissible evidence to the extent the Interrogatory seeks information that is not specific to the United States.

CONFIDENTIAL BUSINESS INFORMATION/TRADE SECRET –

REDACTED

INTERROGATORY NO. 27:

Identify (by name, date and location) all marketing venues (such as trade shows or fairs) where AfgriTech has promoted or plans to promote its goods or services under the AMINOMAX Mark.

ANSWER: AfgriTech objects on the basis that the interrogatory is unduly burdensome, overly broad, not relevant or material, and not reasonably calculated to lead to the discovery of admissible evidence to the extent the Interrogatory seeks information that is not specific to the United States.

CONFIDENTIAL BUSINESS INFORMATION/TRADE SECRET –

REDACTED

INTERROGATORY NO. 28:

Identify those persons with knowledge of any market research (including surveys, studies, investigations, and focus-group inquiries) conducted by or on behalf of Afgritech relating to the AMINOGREEN Mark, and for each such person, identify the extent of such knowledge.

ANSWER: Afgritech objects on the basis that the interrogatory is unduly burdensome, overly broad, not relevant or material, and not reasonably calculated to lead to the discovery of admissible evidence to the extent the Interrogatory seeks information that is not specific to the United States. Subject to that and the General Objections, Afgritech states none.

INTERROGATORY NO. 29:

Identify those persons with knowledge of any market research (including surveys, studies, investigations, and focus-group inquiries) conducted by or on behalf of Afgritech relating to the AMINOMAX Mark, and for each such person, identify the extent of such knowledge.

ANSWER: Afgritech objects on the basis that the interrogatory is unduly burdensome, overly broad, not relevant or material, and not reasonably calculated to lead to the discovery of admissible evidence to the extent the Interrogatory seeks information that is not specific to the United States. Subject to that and the General Objections, Afgritech identifies Tom Tylutki, a technical consultant, 418 Davis Road, Cortland, NY 13045.

INTERROGATORY NO. 30:

Describe every communication with any person (including, but not limited to, actual or potential customers) relating to any possible mistake or confusion between the AMINOGREEN Mark and the AMINORED Mark at any time, and, with respect to each, state the date of the communication, identify the person(s) involved, and identify all persons with knowledge of the facts relating to each such instance of mistake or confusion.

ANSWER: Afgritech objects on the basis that the interrogatory is unduly burdensome, overly broad, not relevant or material, and not reasonably calculated to lead to the discovery of admissible evidence to the extent the Interrogatory seeks information that is not specific to the United States. Subject to that and the General Objections, and inasmuch as no use of the AMINOGREEN mark has been made in the United States, Afgritech states none.

INTERROGATORY NO. 31:

Describe every communication with any person (including, but not limited to, actual or potential customers) relating to any possible mistake or confusion between the AMINOMAX Mark and the AMINORED Mark at any time, and, with respect to each, state the date of the

communication, identify the person(s) involved, and identify all persons with knowledge of the facts relating to each such instance of mistake or confusion.

ANSWER: Afgritech objects on the basis that the interrogatory is unduly burdensome, overly broad, not relevant or material, and not reasonably calculated to lead to the discovery of admissible evidence to the extent the Interrogatory seeks information that is not specific to the United States. Subject to that and the General Objections, and inasmuch as no use of AMINORED has commenced in the United States, Afgritech states none.

INTERROGATORY NO. 32:

Describe the circumstances of your receipt of any document, correspondence, payment, or telephone call relating to the AMINORED Mark, including but not limited to identifying when it was received, the entity from which it was received, and the specific person who received it.

ANSWER: Afgritech objects on the basis that the interrogatory is unduly burdensome, overly broad, not relevant or material, and not reasonably calculated to lead to the discovery of admissible evidence to the extent the Interrogatory seeks information that is not specific to the United States. Subject to that and the General Objections, Afgritech states there are no such responsive documents, correspondence, payments, or telephone calls.

INTERROGATORY NO. 33:

Identify the channels of distribution and the geographical areas of trade within which Afgritech's goods and services are promoted and/or sold or are intended to be promoted and/or sold under the AMINOGREEN Mark.

ANSWER: Afgritech objects on the basis that the interrogatory is unduly burdensome, overly broad, and not reasonably calculated to lead to the discovery of admissible evidence to the extent the Interrogatory seeks information that is not specific to the United States. Subject to that and the General Objections, Afgritech states that its intended channels of distribution in the United States are sellers of animal foodstuffs, including livestock feed and animal feed supplements throughout the United States. Afgritech's current geographical areas of trade are New York, Maine, Pennsylvania, Connecticut, Massachusetts, New Hampshire and Vermont.

INTERROGATORY NO. 34:

Identify the channels of distribution and the geographical areas of trade within which Afgritech's goods and services are promoted and/or sold or are intended to be promoted and/or sold under the AMINOMAX Mark.

ANSWER: Afgritech objects on the basis that the interrogatory is unduly burdensome, overly broad, and not reasonably calculated to lead to the discovery of admissible evidence to the extent the Interrogatory seeks information that is not specific to the United States. Subject to that and the General Objections, Afgritech states that its current channels of distribution in the

United States are sellers of animal foodstuffs, including livestock feed and animal feed supplements in New York, Maine, Pennsylvania, Connecticut, Massachusetts, New Hampshire and Vermont, and it intends to make the product available for purchase nationwide.

INTERROGATORY NO. 35:

Identify the types of customers with whom Afgritech does business or intends to do business under the AMINOGREEN Mark, and the types of ultimate consumers to whom Afgritech offers or intends to offer for sale Afgritech's goods or services under the AMINOGREEN Mark.

ANSWER: Afgritech objects on the basis that the interrogatory is vague and ambiguous in assuming that Afgritech will be doing business under the AMINOGREEN Mark. Rather, Afgritech intends to sell product bearing the AMINOGREEN Mark. Subject to that and the General Objections, Afgritech states that it intends to sell product bearing the AMINOGREEN Mark to dairy farmers, sellers of animal foodstuffs, including livestock feed and animal feed supplements, and ruminant animal feed manufacturers.

INTERROGATORY NO. 36:

Identify the types of customers with whom Afgritech does business or intends to do business under the AMINOMAX Mark, and the types of ultimate consumers to whom Afgritech offers or intends to offer for sale Afgritech's goods or services under the AMINOMAX Mark.

ANSWER: Afgritech objects on the basis that the interrogatory is vague and ambiguous in assuming that Afgritech is or will be doing business under the AMINOMAX Mark. Rather, Afgritech manufactures and sells product bearing the AMINOMAX Mark. Afgritech objects on the basis that the interrogatory is unduly burdensome, overly broad, not relevant or material, and not reasonably calculated to lead to the discovery of admissible evidence to the extent the Interrogatory seeks information that is not specific to the United States. Subject to those objections and the General Objections, Afgritech states that it sells and intends to sell product bearing the AMINOMAX Mark to dairy farmers, sellers of animal foodstuffs, including livestock feed and animal feed supplements, and ruminant animal feed manufacturers.

INTERROGATORY NO. 37:

Identify each person or agency that has participated in the creation or distribution of advertisements or promotions for Afgritech's goods or services under the AMINOGREEN Mark, and the period of time during which each such person or agency has participated.

ANSWER: Afgritech objects on the basis that the interrogatory is unduly burdensome, overly broad, not relevant or material, and not reasonably calculated to lead to the discovery of admissible evidence to the extent the Interrogatory seeks information that is not specific to the United States. Subject to that and the General Objections, Afgritech states none.

INTERROGATORY NO. 38:

Identify each person or agency that has participated in the creation or distribution of advertisements or promotions for Afgritech's goods or services under the AMINOMAX Mark, and the period of time during which each such person or agency has participated.

ANSWER: Afgritech objects on the basis that the interrogatory is unduly burdensome, overly broad, not relevant or material, and not reasonably calculated to lead to the discovery of admissible evidence to the extent the Interrogatory seeks information that is not specific to the United States. Subject to that and the General Objections, Afgritech identifies Larry Smith, Vice President of Sales & Marketing and a Director of Animal Feed Supplement, Inc. dba New Generation Feeds, Belle Fourche, South Dakota, Les Berghorn, Regional Sales Manager of Afgritech, LLC, and Lime Valley Advertising, Inc., 1620 S. Riverfront Dr., Mankato, MN 56001.

INTERROGATORY NO. 39:

Identify (by parties, jurisdiction, and case number) every other case or administrative proceeding, including proceedings before the PTO, relating to a trademark or service mark to which you have been a party, and for each such proceeding, identify the trademark or service mark involved in the proceeding, and describe the disposition or present status of the proceeding.

ANSWER: Afgritech objects on the basis that the interrogatory is unduly burdensome, overly broad, not relevant or material, and not reasonably calculated to lead to the discovery of admissible evidence to the extent the Interrogatory seeks information that is not specific to the United States. Afgritech objects to the interrogatory as it seeks irrelevant information that is not reasonably calculated to lead to the discovery of admissible evidence, is unduly burdensome, and overly broad. It seeks the permissible scope of discovery in this proceeding. Subject to those and the General Objections, Afgritech identifies *Afgritech Ltd. v. Purina Mills, LLC*, Cancellation No. 92047278, involving the trademark AMINO MIX. The TTAB granted Afgritech's Petition for Cancellation and the proceeding has been terminated.

INTERROGATORY NO. 40:

Identify each person who has supplied documents or information for, or who has participated in responding to, these Interrogatories or Evonik's First Requests for Production of Documents, served concurrently herewith, including each person's name, title, and business address.

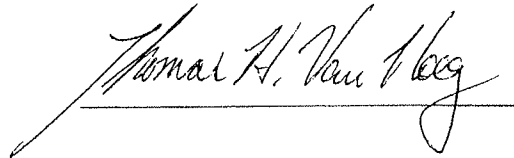
ANSWER: Subject to the General Objections, Afgritech identifies Chris Holmes, Richard Wark, Larry Smith, Jeff Westberg, and Katie Sinclair, all of whom may be contacted through Afgritech's counsel of record.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 21st day of December, 2011, the foregoing **AFGRITECH'S OBJECTIONS AND RESPONSES TO OPPOSER'S FIRST SET OF INTERROGATORIES TO AFGRITECH** has been served on counsel for Afgritech via First Class U.S. Mail to the following address:

Scott D. Woldow, Esq.
Smith, Gambrell & Russell, LLP
1130 Connecticut Avenue, N.W., Suite 1130
Washington, District of Columbia 20036

ATTORNEY FOR OPPOSER EVONIK DEGUSSA GMBH

A handwritten signature in cursive script, reading "Thomas H. Van Hoes", is written over a horizontal line.